

Report

on an investigation into
complaint no 04/C/18012 against
Nottingham City Council

12 July 2006

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Table of Contents	Page
Report Summary	1
Introduction	3
Legal and Administrative Background	3
Investigation	4
A summary of the main events	4
The Loss of Personal Property	7
Comments from those involved	7
The Council's response to a draft version of this report	8
Conclusion	8
Recommended Remedy	10

Key to names used

Ms Porter	The complainant
Officer A	A Senior Housing Officer

Report Summary

Homelessness

A charity (Shelter) complained on behalf of a woman who left her home because of harassment and could, therefore, be considered as statutorily homeless.

Finding

The Local Government Ombudsman found compound failures by the Council. It was legitimate for the Council to try to find an alternative to dealing with Ms Porter under the homelessness legislation but, having given her a temporary tenancy whilst maintaining her original tenancy, it failed:

- to take any action to resolve the situation for eight months;
- made mistakes about housing benefit that caused the rent account of her original property to get into greater arrears;
- allowed the rent arrears to become an obstacle to offering her a permanent tenancy.

As a result she was not rehoused to a permanent tenancy until almost two years after she had fled from her original home.

In addition to the injustice to the woman and her children of living in temporary accommodation for so long, the Council's failings also meant that a property was standing empty for almost two years.

Recommended remedy

The Council has accepted fault and agreed to review its procedures so as to avoid the problems noted above. It has also agreed to pay compensation of £2,000 to the woman concerned. The Ombudsman asks the Council to complete its review within three months of the publication of the report and to tell her of the results.

Introduction

1. A housing charity, Shelter, complains on behalf of Ms Porter that the Council failed to give proper consideration to her request for permanent alternative accommodation. This was following her representations that because of harassment, she was no longer able to remain at her home.
2. For legal reasons, the names used in this report are not the real names of the people and places concerned¹.
3. An officer of the Commission has met with Ms Porter, has examined the Council's files and has interviewed officers of a company contracted to carry out housing responsibilities on behalf of the Council.
4. An opportunity has been given for Shelter, Ms Porter and the Council to comment on a draft of this report prior to the addition of the conclusion.

Legal and Administrative Background

5. The statute law relating to homelessness² is detailed and has been clarified by extensive consideration in the courts. The Secretary of State has issued a Code of Guidance which the Council must take into account when deciding how to respond to people who claim to be homeless. In simple terms, people are homeless if they have no accommodation which is available for their occupation. This will include instances when they are unable to continue to occupy accommodation if that would lead to violence against them or their family.
6. If someone seeks assistance on the grounds that they are homeless, the Council has a duty to make inquiries into their circumstances. In relevant cases, including where the person's vulnerability creates a "priority need" and where they have not become homeless intentionally, the Council will have a duty to see that accommodation is made available for them. The Council's duty will normally be discharged by one offer of suitable accommodation, whether or not it is accepted by the applicant.
7. If the Council has a duty to help, it may also have a further duty to take reasonable steps to protect the homeless person's personal property.
8. The law requires that the Council must notify an applicant of its decision on homelessness in writing. It must tell the applicant that he or she has a right to a review of a number of decisions, including whether there is a duty towards the

¹ The Local Government Act 1974, section 30(3)

² Mainly The Housing Act 1996 Part 7

applicant and whether a suitable offer of accommodation has been made. An appeal may be made to the County Court against a review decision.

9. The Code of Guidance says that whilst local authorities cannot avoid their obligations under homelessness law, it is open to them to find alternative solutions to problems of homelessness where to do so would be appropriate and acceptable to the applicant.³
10. The Council's procedure for responding to requests for emergency rehousing from its own tenants states that people have a right to apply to the Council for help under the statutory homelessness provisions but that it is preferable to try to prevent homelessness by seeking to meet an applicant's needs, where appropriate, by an alternative route, as envisaged in the guidance referred to above. Under the procedure, approval may be sought from a Housing Management Panel to give a priority for a transfer to other accommodation. Housing Management Panels are made up of three or four senior officers of the Council who meet about once a week.
11. Under the Council's policy, if a tenant who applies to be rehoused has substantial arrears of rent, the Director of Housing Operations (formerly the Assistant Director of Housing) must agree to the case going to the Housing Management Panel.
12. Tenants may be transferred temporarily to 'decant properties' while essential work is done in their home and it would be unreasonable or unsafe for them to remain. The Council's policy was revised in April 2004 to state that a tenant must not be 'decanted' for any reason other than the repair or improvement of their home. Any other transfer, whether temporary or otherwise must be carried out under the emergency rehousing procedure.

Investigation

A summary of the main events

13. Ms Porter reported incidents of harassment between May and July 2003. These included threats and actual physical assault against her and her children, by her sister and associates who lived close to Ms Porter's home in First Street. The Council rehoused Ms Porter and her three children, all of primary school age, initially for a few days in emergency accommodation, then in a house in Second Street, about two and a half miles away.
14. The Second Street house was a 'decant property'. Such properties are offered on a temporary basis and tenants of the Council to whom they are offered retain the tenancy of the property from which they have moved. An agreement which Ms

3 Code of Guidance on Homelessness Chapter 3. 5

Porter signed on 7 July 2003 indicates that she would stay at Second Street “while works are carried out” at First Street, of which she would remain the tenant.

15. According to Ms Porter Second Street has a rough reputation and she only agreed to the move on the understanding that it was to be temporary. She recalls meeting with an officer in August 2003 who told her that the Council was looking for an alternative property for her and that she could expect a move to permanent accommodation in 8 – 12 weeks. There is no record of this interview in the Council’s files nor of any advice to Ms Porter at this time about how her long-term accommodation needs might be met.
16. All of Ms Porter’s children transferred to schools closer to Second Street. Ms Porter made her own arrangements for the move but was unable to take all her possessions, some of which remained in First Street.
17. Ms Porter recalls her time at Second Street as a very stressful experience: the house was in poor condition when she moved in, although the Council subsequently carried out repairs; her children were bullied and unhappy and she took an overdose of medicinal drugs, in order she says, to try to force the Council to offer her another move. A letter from her GP in February 2004, confirms that she was on medication for depression.
18. Ms Porter says she made inquiries at the local housing office about her situation in January 2004. She was apparently told that the officer to whom she had spoken previously (paragraph 15) was on long term sick leave and that her records had been lost. There is no note of any such discussion in the Council’s records.
19. At the time of the move, Ms Porter received housing benefit for the whole of the rent on the First Street Property. However, her rent account was over £900 in arrears. Since 2000, a small amount had been paid into the rent account, from a direct deduction from Ms Porter’s income from the Benefits Agency. Misunderstandings about the appropriate address for housing benefit payment led to this being cancelled, together with the direct deductions. As a result, Ms Porter’s rent account went further into arrears and the Council served notice on her on 13 February 2004, seeking possession of the First Street house.
20. Ms Porter made further contact with the Council in February 2004, at the invitation of a housing benefits officer. She also completed a form to apply for a transfer from Second Street. Shortly afterwards, Ms Porter contacted Shelter which wrote to the Council on 19 March. It referred to the absence of any offer of a move to permanent accommodation, the confused situation with housing benefit, the notice seeking possession and the poor state of repair of the Second Street property.
21. The earliest written statement from the Council about Ms Porter’s housing status and prospects is contained in a reply to Shelter on 5 April. The Council said that, following the reports of harassment it had agreed to move Ms Porter temporarily, while her case was being investigated. However it had taken longer than usual to

make progress because of staffing problems. A report had been prepared for submission to the Council's Housing Management Panel for authority to offer Ms Porter an alternative tenancy. However, the arrears on her rent account were a stumbling block and reference to the Panel would have to be agreed by an Assistant Director of Housing. Such approval was being sought. The repairs to the Second Street house were completed around this time.

22. The Council's letter did not refer to the position with the housing benefit. By this stage, benefit, including a back payment, had been re-instated so that the arrears at 5 April were back to about £920. Correspondence about the housing benefit continued between Shelter and the Council throughout 2004, with the Council producing a detailed account in August of how any confusion had arisen.
23. However, although housing benefit was restored and back dated, there had been a break in the direct deductions paid into Ms Porter's rent account from the Benefits Agency. The deductions were restored in November 2003 but the Council's officers failed to recognise this, which led to an officer postponing contact with the Assistant Director and to ask Ms Porter to make good the payments. This was so that he could report that the repayment plan on the arrears had been strictly adhered to. The true position was eventually recognised, following correspondence from Shelter.
24. It is not clear from the Council's records how it processed the application to the Housing Management Panel. However, a letter from the Council to Shelter dated 30 November 2004 says that a request "in line with procedure" to the Assistant Director for permission to seek the Panel's approval had been refused "on the ground of substantial rent arrears". The letter does not give the date of the Assistant Director's decision, but appears to refer to a time some months earlier. There is no contemporaneous record of the decision, nor on what it was based and nothing to indicate that it was relayed to Ms Porter. The letter of 30 November goes on to say that a further approach to the Assistant Director had been successful and it was expected that the Panel would consider the case at the next available date.
25. The Council's records include two forms completed by officers seeking permission for Ms Porter to transfer from Second Street, notwithstanding her rent arrears. One form is not dated, the other is dated 2 August 2004. The space for indicating the Assistant Director's decision is blank in both. Notes on the Council's file indicate an intention to submit the issue to the Housing Management Panel in August 2004. In the event, Ms Porter's case was considered in February 2005 and priority granted for a transfer to a permanent tenancy.
26. There is nothing in the Council's records to indicate any explanation for the delays in processing the application, other than a reference to a re-organisation within the housing service around mid-2004. There is no evidence of any attempt to keep either Ms Porter or Shelter regularly informed of progress or reasons for the lack of it.

27. In a letter to Shelter dated 24 August 2004, the Council accepted that it had dealt with Ms Porter in a less than satisfactory way and offered her £100 by way of compensation for her time and trouble.
28. Following the decision in February 2005 to offer her alternative accommodation with a secure tenancy, Ms Porter was offered a permanent tenancy of the Second Street house and then of another property. She refused both offers. She was offered and accepted the tenancy of another house near Second Street, on 30 June 2005.

The Loss of Personal Property

29. The First Street property was broken into shortly after Ms Porter's move. Although the Council then secured it with metal sheets on 23 July 2003, further break-ins occurred and a number of Ms Porter's possessions were destroyed. Officers say that vacated properties may be secured by boarding up, at the discretion of the local housing manager. The operation is expensive and not to be undertaken lightly. They say that it is a matter of judgement as to whether there is a need to do anything more than simply locking the doors and whether it would be reasonable to expect a departing tenant to be responsible for protecting his or her own possessions.

Comments from those involved

30. In addition to its comments on perceived shortcomings in the Council's administration of Ms Porter's case, Shelter says that the Council has failed to meet its obligations to Ms Porter under the homelessness legislation. Briefly, it contends:
 - The offer of temporary decant accommodation did not discharge the Council's duty
 - Ms Porter was not given an informed choice as to whether she should make an application under the statutory homeless procedure or whether to rely on the Council's emergency rehousing procedure
 - The Council's initial refusal to award Ms Porter priority via a Housing Management Panel amounted to a decision to refuse assistance under the homelessness legislation, but Ms Porter was not informed of the decision or of any right to review.
31. The Council, whilst conceding that it has not dealt with Ms Porter as efficiently as it would have liked, says:
 - The Secretary of State has advised that it is acceptable to find alternative means of preventing homelessness (see paragraph 9)
 - It did secure alternative accommodation for her, away from the source of harassment
 - Ms Porter would have had very little choice as to where she was rehoused if she had pursued a homeless application

- Any contention that the Council had failed to properly consider the merits of Ms Porter's case should be balanced by taking into account that Ms Porter had failed to abide by her tenancy obligation to pay her rent.
32. Officer A is a senior housing officer concerned with policy. He has had no direct involvement with Ms Porter's case. He says that prior to the current policy on decant properties (paragraph 12) it was common practice to use such properties to rehouse tenants who were fleeing violence or harassment. The practice commonly led to the type of shortcomings evident in Ms Porter's case.
33. Shelter suggests that the policy may not yet have affected practice in all cases. It refers to a letter from an officer of the Council dated December 2004, in another case, in which the practice of rehousing victims of harassment temporarily in decant properties is described as current and routine. The Charity says it is aware of many cases where the Council has failed to adhere to policy, in respect of homelessness applications with unsatisfactory consequences for the applicants.

The Council's response to a draft version of this report

34. In a draft of this report I recommended that the Council should produce revised procedures with better information on homelessness for officers and those seeking help and also that it should pay £2,000 compensation to Ms Porter for injustice arising from maladministration. The Council has agreed to these suggestions and has begun a review of procedure.

Conclusion

35. There was maladministration which caused Ms Porter injustice. When Ms Porter contacted the Council in mid-2003 it accepted that the harassment she had reported warranted a move to other accommodation, at least temporarily, and the necessary arrangements were made. However, that move clearly did not provide a permanent resolution and meant that Ms Porter occupied one house while retaining the tenancy of another.
36. At that stage, a considered decision was needed as to how to achieve a lasting solution. A number of options might have been considered. Officers might have attempted to reconcile Ms Porter and her neighbours, or to consider legal proceedings against the perpetrators of the harassment. In addition, or alternatively, the Council might have considered whether Ms Porter was homeless within the meaning of the law and eligible for assistance. Otherwise, it might have decided that the best way ahead would be simply to allow Ms Porter to remain at the Second Street property, for a short time, until a suitable vacancy arose from within its housing stock.
37. There is no record that any such considered decision was taken, although Ms Porter clearly believed that the Council had opted for the last of the options described

above. In the absence of any indication to the contrary, I must conclude that this is the advice she was given.

38. There is no indication that the Council set about identifying a suitable transfer property or arranging for Ms Porter to be accorded priority for a move under the allocation rules. The Council's reluctance to transfer tenants with significant rent arrears was a stumbling block. That reluctance, together with largely unexplained delays in progressing the issue, meant that Ms Porter remained in the property she did not want for almost two years, while the house of which she was the tenant, remained empty.
39. When Ms Porter sought help from the Council, there was clearly a question as to whether she was homeless and eligible for assistance. The Council was under a duty to make inquiries into Ms Porter's circumstances. It has referred to statutory guidance, under which it believes that it may seek to resolve issues of homelessness using alternative procedures to those specified under the homeless legislation.
40. I have no criticisms, in principle, of the Council's approach in this respect. However, the statutory guidance refers to the need to act in a way which is appropriate and acceptable to the homeless applicant. It should not be used to set aside the rights and duties conferred by the law. The move to temporary accommodation in Second Street was not seen by Ms Porter as an acceptable lasting solution to her housing problem. The Council should have explained to her the rights which the homeless legislation confers, the relevant procedures and how the Council might discharge its duty under the law. It could then have discussed with her whether an attempt at an alternative, informal resolution of her situation would be acceptable to her.
41. In considering an informal resolution of the problem, it was not acceptable to take account of her rent arrears when considering the issue of rehousing. The arrears were irrelevant to the cause of her flight from the First Street house and an agreement had been put in place to deal with the issue that had been in operation for some years. The fact that it had broken down following the move to Second Street was in part the fault of the Council in failing to explain the implications of the move for her housing benefit and on the direct deductions from the Benefits Agency. Having agreed to recoup the arrears via deductions from Ms Porter's benefit the Council's insistence on taking account of the arrears was unfair and was maladministration.
42. Without the efforts of Shelter on her behalf, it seems quite possible that Ms Porter would have remained in indefinite occupation of one property, while remaining the tenant of another. This is an inefficient use of the housing stock. The Council's approach made no sense from any point of view. The Council has recently taken policy initiatives which discourage the use of decant properties to rehouse people fleeing harassment. Evidence supplied by the Charity would seem to suggest that some officers at least, remain unaware of the change of thinking.

43. The damage to Ms Porter's property was not the result of maladministration by the Council. It appears that the First Street property was broken into both before and after the Council boarded it up. The main responsibility to protect her property lay with Ms Porter.

Recommended Remedy

44. The Council has, as noted earlier, agreed to review its procedures regarding those who are forced to leave their homes because of domestic violence and other forms of harassment. It has also agreed to pay compensation of £2,000 to Ms Porter to account for the injustice caused to her by maladministration. The Council should inform me of the outcome of the review of its procedures within three months of its receipt of this report.

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12 July 2006